

# **Exhibit 1**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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:  
BMG RIGHTS MANAGEMENT (US) LLC, :  
et al., :  
Plaintiffs, :  
: Case No. 1:14-cv-1611  
vs. :  
: :  
COX ENTERPRISES, INC., et al., :  
Defendants. :  
-----:

VOLUME 8 (P.M. portion)

TRIAL TRANSCRIPT

December 11, 2015

Before: Liam O'Grady, USDC Judge

And a Jury

1 BY MR. WAKEFIELD: (Continuing)

2 Q. Yeah. Are you aware of any discussions at the management  
3 level within the company of promoting or tolerating copyright  
4 infringement at Cox?

5 A. No.

6 Q. Are you aware of any discussions -- have you encountered  
7 any discussions about gaining revenue from infringement?

8 A. No.

9 MR. THEODORE: Objection, Your Honor, that's leading.

10 THE COURT: Overruled.

11 A. No.

12 BY MR. WAKEFIELD: (Continuing)

13 Q. And are you aware of any discussions about trying to  
14 retain customers despite infringement to hold on to revenue?

15 A. No.

16 Q. All right. Approximately how many customers a year does  
17 Cox disconnect?

18 MR. WARIN: Your Honor, may we approach?

19 THE COURT: Yes.

20 NOTE: A side-bar discussion is had between the Court  
21 and counsel out of the hearing of the jury as follows:

22 AT SIDE BAR

23 THE COURT: All right.

24 MR. WARIN: I'm not sure of the relevance of how many  
25 they disconnect in general. The issue is, if he knows, and I

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1 don't think he does, how many they disconnect for repeat  
2 copyright infringement.

3 Generally disconnected because they don't pay their  
4 bills or a spam attack, that's not relevant.

5 THE COURT: This is pretty far off his plate, I would  
6 assume.

7 MR. WAKEFIELD: So, Your Honor, I think it's highly  
8 relevant. The suggestion is that the company is willfully  
9 blind to infringement because of a desire to maintain revenue.  
10 They terminate millions of customers a year. Five customers,  
11 ten customers, 60,000 customers, it's not a drop in the bucket.

12 And I think we should be entitled to put on that  
13 evidence.

14 MR. WARIN: Your Honor, we haven't gotten any  
15 information in discovery.

16 MR. THEODORE: And they didn't -- I mean, not only --  
17 I think that the major objection is -- it's also interesting  
18 that there are no documents disclosed. They disclosed one  
19 document to us last night. This is their financial witness who  
20 is their financial 30(b)(6). They disclosed one document to us  
21 last night that he would use. But now they're going far afield  
22 into topics which they didn't allow us any discovery  
23 whatsoever.

24 And in fact, even on his financial topics, they've  
25 gone into matters on which they -- they start talking about tax

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1 dollars, which they never disclosed to us. I mean, they --

2 THE COURT: This is so far off the beaten path that  
3 the objection is sustained. Your exception is noted.

4 The whole focus has been on -- of this case is on  
5 what people in Atlanta were doing with the BitTorrent  
6 infringements. And this is another universe, and it's not  
7 relevant, and it is prejudicial. So your exception is noticed.

8 MR. WAKEFIELD: Thank you, Your Honor.

9 THE COURT: Thank you.

10 NOTE: The side-bar discussion is concluded;  
11 whereupon the case continues before the jury as follows:

12 BEFORE THE JURY

13 BY MR. WAKEFIELD: (Continuing)

14 Q. I have one more question, Mr. Mencher. In your 20 years  
15 at Cox, have you ever heard of or expressed any concern about  
16 terminating an infringing customer because of a concern about  
17 revenue?

18 A. Absolutely not.

19 MR. WAKEFIELD: Thank you very much.

20 Pass the witness.

21 THE COURT: Cross-examination, Mr. Theodore.

22 CROSS-EXAMINATION

23 BY MR. THEODORE:

24 Q. Sir, if we could -- I am sorry. Good morning, Mr.  
25 Mencher, my name is Jeffrey Theodore. I'm an attorney with